

2023 Kansas Statutes

38-2271. Presumption of unfitness, when; burden of proof. (a) It is presumed in the manner provided in K.S.A. 60-414, and amendments thereto, that a parent is unfit by reason of conduct or condition which renders the parent unable to fully care for a child, if the state establishes, by clear and convincing evidence, that:

- (1) A parent has previously been found to be an unfit parent in proceedings under K.S.A. 38-2266 et seq., and amendments thereto, or comparable proceedings under the laws of another jurisdiction;
- (2) a parent has twice before been convicted of a crime specified in article 34, 35, or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or articles 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6421, and amendments thereto, or comparable offenses under the laws of another jurisdiction, or an attempt or attempts to commit such crimes and the victim was under the age of 18 years;
- (3) on two or more prior occasions a child in the physical custody of the parent has been adjudicated a child in need of care as defined by K.S.A. 38-2202(d)(1), (d)(3), (d)(5) or (d)(11), and amendments thereto, or comparable proceedings under the laws of another jurisdiction;
- (4) the parent has been convicted of causing the death of another child or stepchild of the parent;
- (5) the child has been in an out-of-home placement, under court order for a cumulative total period of one year or longer and the parent has substantially neglected or willfully refused to carry out a reasonable plan, approved by the court, directed toward reintegration of the child into the parental home;
- (6) (A) the child has been in an out-of-home placement, under court order for a cumulative total period of two years or longer; (B) the parent has failed to carry out a reasonable plan, approved by the court, directed toward reintegration of the child into the parental home; and (C) there is a substantial probability that the parent will not carry out such plan in the near future;
- (7) a parent has been convicted of capital murder, K.S.A. 21-3439, prior to its repeal, or K.S.A. 21-5401, and amendments thereto, murder in the first degree, K.S.A. 21-3401, prior to its repeal, or K.S.A. 21-5402, and amendments thereto, murder in the second degree, K.S.A. 21-3402, prior to its repeal, or K.S.A. 21-5403, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, prior to its repeal, or K.S.A. 21-5404, and amendments thereto, human trafficking or aggravated human trafficking, K.S.A. 21-3446 or 21-3447, prior to their repeal, or K.S.A. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, K.S.A. 21-6422, and amendments thereto, or comparable proceedings under the laws of another jurisdiction or, has been adjudicated a juvenile offender because of an act which if committed by an adult would be an offense as provided in this subsection, and the victim of such murder was the other parent of the child;
- (8) a parent abandoned or neglected the child after having knowledge of the child's birth or either parent has been granted immunity from prosecution for abandonment of the child under K.S.A. 21-3604(b), prior to its repeal, or K.S.A. 21-5605(d), and amendments thereto; or
- (9) a parent has made no reasonable efforts to support or communicate with the child after having knowledge of the child's birth;
- (10) a father, after having knowledge of the pregnancy, failed without reasonable cause to provide support for the mother during the six months prior to the child's birth;
- (11) a father abandoned the mother after having knowledge of the pregnancy;
- (12) a parent has been convicted of rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 21-5503, and amendments thereto, or comparable proceedings under the laws of another jurisdiction resulting in the conception of the child; or
- (13) a parent has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition. In making this determination the court may disregard incidental visitations, contacts, communications or contributions.

(b) The burden of proof is on the parent to rebut the presumption of unfitness by a preponderance of the evidence. In the absence of proof that the parent is presently fit and able to care for the child or that the parent will be fit and able to care for the child in the foreseeable future, the court shall terminate parental rights in proceedings pursuant to K.S.A. 38-2266 et seq., and amendments thereto.

History: L. 2006, ch. 200, § 66; L. 2011, ch. 30, § 157; L. 2015, ch. 94, § 13; July 1.